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ALLEGGER

Vol. II, No. 4 • Boston College Law School • November 1, 1982

Faculty Bars J.A.G., Amends Discrimination Policy

Under amended policy, Law School denies interviewing space to employers who openly discriminate on the basis of sexual orientation

by Tim Borchers

On October 22nd the faculty committee of B.C. Law School voted 9 to 5 to bar the Army's Judge Advocate General's Corps from recruiting at B.C. That vote came moments after the committee voted 9 to 6 to amend the law school's policy toward on campus recruiters to include the forbidding of discrimination on the basis of "sexual orientation."

The important decision to bar J.A.G. came only five days before the Army was scheduled to appear for interviews, raising questions in some minds of the fairness of notice to the Army and to those students anticipating interviews. But of more importance to the faculty was the immediate addressing of an issue which has faced JAG again and again this fall at law schools around the country—its admitted policy of refusing to offer jobs to homosexuals.

B.C. joins at least ten other law schools in establishing a policy of non-discrimination against homosexuals. Among the schools are Harvard, Yale, Columbia, U.C.L.A., Wayne State (Mich.), Ohio State, and the University of Pennsylvania. (The *National Law Journal* [October 4, 1982] reported that Temple University Law School officials had also established such a policy, but that it has been overruled by other University authorities.) The University of Wisconsin is also considering the issue, in light of the FBI's withdrawal from recruiting after the FBI learned that the school's Student Bar Association had filed a formal complaint with its placement office with respect to the agency's policy against hiring homosexuals.

In amending its policy and enforcing it against JAG, B.C. has chosen to continue a policy of holding employers to a higher standard than the law requires. The Law School had adhered to the policy of the National Association for Law Placement, but now supercedes even that standard. The "Discrimination Policy," distributed to prospective employers once on initial invitation to recruit here, and again on their arrival, states as amended:

Boston College Law School . . . [is] committed to a policy against discrimination practices based upon sex, sexual orientation, age, disability, race, color, religious creed, or national origin, in the interviewing and employment of students and alumni(ae). It is expected that employers will abide by applicable Federal and State laws prohibiting discrimination and will take positive steps to assure that no such discrimination occurs in hiring, promotion, compensation, or work assignment. The Law School will extend its facilities and placement services only to those employers who are committed to practices consistent with this policy. [Emphasis added.]

Age and Disability Discrimination Dismissed

It was no easy decision for the faculty to make in light of the importance of the issue to contemporary thought and

policy and in light of the emotional nature of the homosexual issue. The faculty meeting did not, with some minor exceptions, reach a high-pitched emotional level. Rather, the debate centered on legal issues and concepts.

Discussion opened with a dismissal of the question of whether the Army was "discriminating" on the basis of age and disability. Stated simply, it was not at all clear that Army policy was discriminatory in these categories because of a constitutionally and Congressionally recognized rational basis for excluding persons from service who are not or who are not as likely to be capable of combat. JAG lawyers are officers and must meet those criterion. Admittedly, the Army's policy of age and disability discrimination is arbitrary, but it was not seen as capricious and by no means a clear violation of B.C.'s prohibition of discrimination in those areas. That disallowing certain applications on the basis of age or disability may be non-discriminatory was illustrated by the analogy of disallowing Catholic priests in applying for rabbinical positions, based on religion; that would not be discrimination in the legal sense of the word.

Next it was queried whether the Law School faculty was properly empowered to make such a decision, a sensible question in light of Temple University's recent experience described above. While Dean Huber was sure of the propriety of the action, it being something the faculty is accustomed to doing, someone else later stressed that to take this vote and



Law school faculty met October 22nd to discuss J.A.G. controversy.

set this policy is something the faculty should be doing.

"Hold Them Only to What the Law Requires"

Discussion having been narrowed, and its utility and propriety assured, the principal voices of those against amending the discrimination policy were heard. Based on the belief that B.C. should hold employers only to what the law requires, and accept on good faith their compliance with our present policy, it was thought that holding them to a higher standard would be to "impose our will" on those who are providing us with a service. "It isn't any of our business" what the recruiters consider in employment

beyond insisting that they act legally while using our facilities. It was contended that to request any more is to open a "hornet's nest" of evidentiary problems and to restrict our open-door policy.

B.C.'s policy to bar employers who discriminate in any fashion was seen to violate the notion that B.C. should be open-handed toward those who have taken the trouble of coming here to recruit. But of greater importance to the faculty was the notion that those who are permitted to use our facilities for their benefit ought to be required to comply with our beliefs and our standards with respect to qualities inappropriate for consideration for legal employment.

continued on page 5

Snack Bar Unlikely to Open on Weekends

Overtime service seen as uneconomical



Stuart Hall Snack Bar: pack a sandwich and bring change for the soda machine

by Tim Borchers

Some of us will remember that in the spring of last year the Snack Bar was opened on Saturdays and Sundays for the convenience of law students. Well, according to the director of food services at the Newton Campus, John Panasevich, that service was an uneconomical flop. Even with the possibility of more students using such a service this year because of the larger student body, the marginal profitability of reopening on the weekends is negative.

Apparently the grill operation is particularly expensive. What's more, the Newton dining service budget was cut this year some 7%, or about \$100,000. As if that wasn't enough, despite the abundance of work-study students willing to work for the dining service, Newton's Labor budget was significantly cut.

Panasevich is amenable to the idea of opening during law school exam and reading periods, at times when undergraduates are not on campus, but at this point he is waiting to see what kind of interest there is in such a plan. It's clear that the dining service is not going to distribute questionnaires for law students to indicate their preferences. Panasevich is going to require at least either an initiative from the Law Students Association or the hankering of students wanting to use the dining service. If it were opened, the service would probably be limited to cold foods and hot and cold drinks. All in all, opening the Snack Bar on weekends is not hidden cornucopia.

Plants Purloined: see page 3

Editorial

"Law School need not be a confusing, traumatic, and overwhelmingly boring gauntlet to be traversed in pain."

—Derrick A. Bell, Jr.

The October 1982 edition of the *Student Lawyer* carried an excellent article entitled "The Law Student as Slave," written by law school dean Derrick A. Bell, Jr. It presented many criticisms and constructive suggestions with respect to the structure of law schools, and made the point that law students are not getting their money's worth. Bell also says that law school professors generally are poor teachers and that the tenure system exacerbates that weakness. He calls upon law students to rebel against the system that is "enslaving" them. One of his most provocative observations however was that, "Law school need not be a confusing, traumatic, and overwhelmingly boring gauntlet to be traversed in pain."

This point raises the eternal question, "Why?" Why must law school be a "gauntlet"? Why are the second and third year courses so excruciatingly boring? And why are so many law students constantly in pain?

It would appear that there are three commonly voiced reasons for the way law school is set up. One is the "Initiation Rite" approach. That is, being a lawyer is much like joining a fraternity and law school is haze week. There are many problems with this theory, not least of which is the fact that

fraternities themselves have done away with the unnecessary cruelties of initiation rites.

Another explanation is the "sink or swim" rationale, i.e., if you can't juggle the course overloads in law school you won't be able to juggle the case overloads in real life, so find out now. This rationale is also a corollary of the "there are too many lawyers anyway" attitude—the more you can force out the better.

The absurdity of that argument is also clear. One needn't be a hyperactive, anti-social neurotic to be a good lawyer, so there is no good reason to gear law school to producing such people.

Finally there is the "that's the way it's always been" response. As always, that excuse just doesn't hold water.

Perhaps it is time that law students heed Dean Bell's "call to arms." Law school needn't be so painful—no good reason for the current system exists, and there are many changes that could be made to remedy the situation. Lighten up the first-year course load, increase Legal Research and Writing's credits, make upper class course selections more interesting, expand the clinical programs so that all interested students can participate, etc., etc. However, once law students become associates, there will be no time for them to return to their alma mater and restructure the school system. Therefore, law students should voice their anger with the system now, while they are here; the problem is immediate and we can have some impact. Your comments and suggestions are welcome.

Life at Newton

by Fred Grant

I have been encouraged to restart my column, and do so because I can imagine no better way to pass a Tuesday evening than in writing it.

The Library is the focal point of law school. For better or worse, it is physically the most receptive area at Boston College Law School. People hang out there, the Library has newspapers and magazines until they are stolen, and, yes, the Library is a repository for law books and a place to study law.

Sometimes.

The carnage in the Library at this writing reminds that the Library is far too often a poor place to study law. This is true largely because the Library

does not enforce basic rules that make a difference in the quality of the Library for the user. People must be persuaded to control chatter, to use books as if others might want them (reshelving and controlling hoard size), and to yield their study carrels when they are finished. There is nothing radical in this, but these problems exist and worsen for want of one suggestion that the community finds them intolerable. Making the atmosphere of the Library worse is the continuing problem of overcrowded study space, which gets worse as the semester goes on. Even with the addition of new room on the first floor, the undergraduate presence still runs as high as fifty percent on weekends. This year the influx stands entirely unchecked. And the door monitors have been eliminated, as no longer needed because the undergraduate study space has been moved out of the building and down into the chapel basement. (?) With lines running to a dozen souls on weekends, the present supply of photocopies is falling short of demand. There is room for more machines. These institutional problems can be resolved easily, and attention to them will markedly improve the quality of life in the Library. They need to be made priorities.

Yet the most troubling thing about these continuing problems of chatter, purloined books, and staked-out study space is what it says about our regard for each other. It bears remembering that many of us were drawn to this school by its special atmosphere, a concern for people as well as law, and that we need to work to preserve this special quality in daily life. Conceding that most of the problems in the use of the Library arise from pure negligence, and that this negligence is encouraged by lack of a firm statement of Library policy, we are all still responsible for the atmosphere in this center of our daily lives at law school.

Institutionally, a strong reminder of the importance of these courtesies is needed. As a matter of personal behavior, we must remember to respect each other.

Recommended Reading. The role of this part of the column is to point out life in one caselaw. This week repeats an old favorite. *Hampton v. Norton Caroline Pulp Co.*

Letters

To the Editor:

In an effort to report on the law reviews at Boston College Law School, "Making Law Review: Big Deal or Big Mistake" which appeared in the October 4, 1982, edition of the *Alledger* instead reinforced some unhealthy misconceptions concerning the law reviews. I appreciate your efforts to correct some of the factual errors contained in the article by printing a correction in the subsequent edition of the *Alledger*. Nevertheless, in the interest of better understanding I am compelled to write to dispel such notions specifically as they pertain to the *Environmental Affairs Law Review*.

At the outset I should stress that B.C. is unique in its support of several legal publications, including three law reviews—*B.C. Law Review*, *Environmental Affairs Law Review*, and *International and Comparative Law Review*. Each of the reviews is of equal status to the others as regards academic criteria and the awarding of credit. This configuration is in contrast to most other law schools which support a single review named after the school (generic) and possibly a topical review of secondary status. Dean Huber, the faculty, and the Placement Office at B.C. have been careful to apprise other schools and potential employers of the unique configuration of reviews at B.C. In this context, it is dismaying that many B.C. students are incorrectly informed regarding their own law reviews.

Environmental Affairs is now in its tenth year and has enjoyed the largest circulation and widest distribution of any of the reviews at B.C. Currently, *Environmental Affairs* has the third largest circulation of any environmental review in the country. The article's original statement that B.C. *Law Review* is "also the oldest and most widely distributed of the reviews" is both inaccurate and misleading. This apparently minor discrepancy is indicative of the nature of the general misunderstanding surrounding the reviews.

Second, while I don't doubt that B.C. *Law Review* has what the article refers to as a "hard-earned reputation for scholarship," *Environmental Affairs* is held in equally high regard and competes with similar reviews from Harvard, Columbia, and Northwestern Law Schools. Moreover, *Environmental Affairs* is noted for its practical value and is regularly consulted by practitioners in many fields. As a result, *Environmental Affairs* not only has a vigorous working relationship with the outside world beyond academia, but is also regularly cited in agency reports, litigation briefs, and cases.

Third is the problem of "jobs." The article notes that many factors, both sensible and nonsensical, have led to a misperception that neither *Environmental Affairs* nor *International Law Review* presents good job prospects. While I cannot hope to alter the subjective nature of those who "feel" better about the B.C. *Law Review*, I can point out that *Environmental Affairs* members have not in the past experienced, and do not presently experience disadvantages in securing desired employment. *Environmental Affairs* not only places its share of persons in the traditional corporate firms and judicial clerkships, but also has a number of alumni in major federal agencies and various honors programs such as those at the Justice Department. Recent tight-market trends have not impaired the opportunities of *Environmental Affairs* members. Contrary to statements in the article, experience indicates that even traditional corporate firms do not prefer one review to another. Lawyers who have been through the law school process recognize the law review experience for what it is: an opportunity to develop research habits, analytical skills, writing ability, and independence. This holds true no matter what the topic of your article may be, and no matter what the "topic" name of the review may be. This is especially true in the case of

Environmental Affairs because it is noted as a truly interdisciplinary review, encompassing many areas of the law and other disciplines as well.

The student who writes off one review for another on the basis of preconceived notions of job prospects or topicality has short-changed herself and misapprehended the nature of the self-education process involved in becoming a lawyer. Unfortunately, the article continues to exacerbate the problem, and perhaps became captive to the very misperceptions which were the subject of its report. Despite these concerns, I really do appreciate the paper's efforts to report on the law reviews—a subject sorely in need of greater illumination.

Michael Collins
Editor-in-Chief

B.C. *Environmental Affairs Law Review*
October 26, 1982

To the Editor and to the Director of Student Accounts:

Greetings,

I am a law student at B.C. and a recipient of G.S.L. and N.D.S.L. loans for the current year.

Thirteen days ago I applied for a refund of the surplus in my account over the amount of my fall bill. At that time I was told the refund would be mailed to me, at my request which I gave at that time, on the 29th of September, one week later. I have not had the use of the money for this time period and it appears I will not for at least a few more days.

I was told upon inquiry to your office today that (1) the GSL refund was mailed on the 29th to my New Hampshire address, (2) the NDSL refund was mailed on the 4th of October, five days after the check was to have been mailed. The NDSL refund was also mailed to my New Hampshire address.

The delay in refunding the NDSL refund and the delay caused by your office's mailing the refunds, which are still not in my hands, to a blatantly inappropriate address constitute negligence on your part, to my damage of the use of that money during the delay period, including interest and any penalty which I may incur for failure to pay housing rental due on October 1st, and any other injury which may be caused by my inability to have access to the refund money.

Your office should have been alert to the fact that a student who requests a refund of money representing an amount over-paid to Boston College wants, needs and deserves to have that money sent to him as expeditiously as possible, to his local address, which your office has or could easily obtain, and within the time period declared at the time of the request for refund.

Furthermore, your policy of mailing refund payments one week after requested is unfair in light of the fact that refund checks are available only two days after request for those students who will go to the imposition of returning to your office in person. As such, no reasonable policy would permit the mailing of refund checks any later than two days after request. It is also unreasonable that students should have to request the return of their money over-paid to Boston College. The surplus should automatically be refunded.

You are hereby put on notice of my intention to withhold from my second semester's payment reasonable interest charges for the loss of the use of these funds for the period of their deprivation attributable to the neglect and negligence of your office. Any other penalties I incur for the loss of access to these funds will also be deducted and notice given to your office to that effect.

Timothy B. Borchers
October 5, 1982

Editor's Note: To the anonymous grammarian—you're wrong.

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A Tribute to Professor James W. Smith: 1930-1982

Professor James Smith, a distinguished professor of law at Boston College Law School for the past twenty-four years, died of cancer on October 15th at his home in Framingham. He was fifty-two years old.

Professor Smith graduated *cum laude* with an A.B. in Mathematics from Boston College in 1952. A member of the R.O.T.C. program, he was commissioned a lieutenant and served in the U.S. Army in Germany from 1952 to 1954. He returned to the Law School and graduated first in his class in 1957, where he was an editor of the *Law Review* and a member of the Moot Court Team. He earned an LL.M. in Taxation from New York University, and then joined the B.C. Law faculty in 1958.

The subjects Professor Smith taught included Business Organizations, Corporate Finance, Damages, Legal Method, Federal Taxation, and Products Liability. He is best remembered, however, for his teaching in the area of Tort Law. Few professors are so intimately associated in the minds of their students with a subject, or as respected in their teaching of it. His intellectual probing and genuine enjoyment of the subject inspired all his students. He was also known for his use of multiple choice questions for his law school exams. Professor Smith also devoted himself to the further development of the Law School, its curriculum, faculty and students through committee work, setting high standards of excellence and professionalism.

Professor Smith's scholarly research centered on Massachusetts law and practice. Appointed by the Massachusetts Supreme Judicial Court as Co-Reporter for the Standing Advisory Committee for the Massachusetts Rules of Civil Procedure, Smith spent five years developing court rules of trial and appellate procedure for the state's courts. Following the adoption of the rules, he and his Co-Reporter, Hiller Zobel, authored an authoritative four-volume treatise, *Massachusetts Civil*

Procedure, as part of West Publishing's *Massachusetts Practice Series* (1974-1976, 1981).

His publications also include *Massachusetts Corporation Law with Federal Tax Analysis*, co-authored with Cavitch, and published by Matthew Bender Co. in 1963. From 1967-1975, Professor Smith served as counsel for the Massachusetts Commission on Biomedical Research, drafting a great deal of legislation including a 1974 statute prohibiting the performance of medical experimentation on live human fetuses. Smith also served as author of "The Boston Letter" for the Massachusetts Legislative Service for several years.

Professor Smith was also one of the founders and principal lecturers for the popular SMH Bar Review Course. A resident of Framingham, he served for several years on its Zoning Board of Appeals, and as a Corporator of Framingham Union Hospital. Mr. Smith was also counsel for the firm of Bikofsky, Walker, and Tuttle in Framingham. In 1980, he was honored as a recipient of the Boston College Law School Fiftieth Year Anniversary Award, and was elected to the governing board of the Law School's Alumni Association in 1981.

The wide range of Professor Smith's interest in the law can be seen in his published articles, which include: "Relief for Minority Shareholders: Section 19 of the Technical Amendments Act of 1958," 1 *B.C. Ind. & Com. L.R.* 91; "Recent Developments in the Field of Corporate Business Purchase Agreements," 14 *Tax L.R.* 413; "Comparative Negligence in Massachusetts," 54 *Mass. L.Q.* 140; "New Mexico Professional Corporations," with Hugh J. Ault and Robert J. Desiderio, 9 *Natural Resources J.* 591; "Corporate Professional—United States v. Empey," with Hugh J. Ault, 54 *Mass L.Q.* 14.

A memorial service is being planned for Professor Smith. Final arrangements are still being made and will be announced as soon as they are finalized.

—Michael F. Kilkelly

A Personal Testimonial

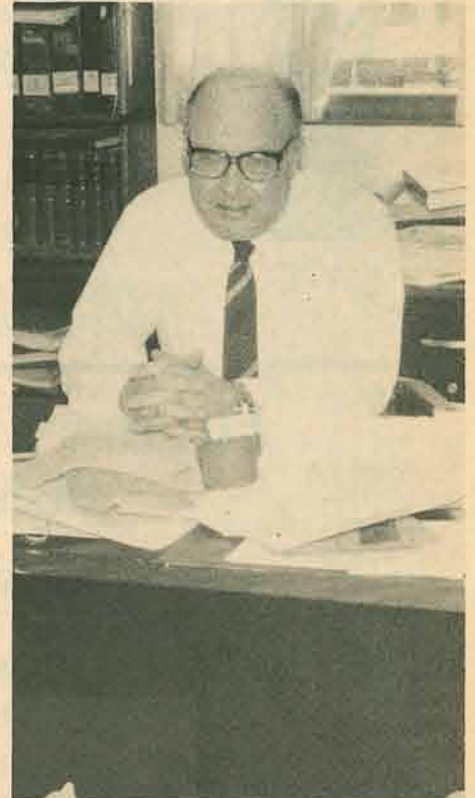
On October 15, 1982, Professor James W. Smith died and B.C. Law School suffered an irrevocable blow. Jim Smith was the heart of the school. He spent his entire professional life—a span of 24 years—in the service of the law school from which he graduated—the law school which he loved.

For over 20 years, Jim Smith taught torts to first year students. He became identified with his subject to an extent far greater than that attained by most law professors. To his students he was known as "Jimmy Torts." But Jim was much more than a torts teacher. He used the subject of torts to teach law in all of its ramifications. His class instruction was as much steeped in legal method and legal analysis as it was in tort doctrine. It was in his class that most students came to grips with the case method and learned how to read a case. It was in his class that most students became aware of the limitations of law as an effective problem-solving tool and of the judicial system in the resolution of disputes. It was in his class that students came to appreciate the differing roles played by the judge, the jury, and the legislature. It was in his class that most students came to "think like a lawyer." It is clear that Jim Smith didn't teach torts; he taught law.

Professor Smith was the bulwark of the first year. He was a truly outstanding teacher. The excellence of his instruction more than made up for any failures or inadequacies in the first-year curriculum. To many students, whatever B.C. had to offer, you were guaranteed to get it in Jim Smith's class.

Jim Smith was much more than a teacher and a scholar. He was a family man par excellence—a devoted husband and father. It is perhaps in his role as a family man that his true greatness exists. Jim Smith was truly a remarkable person. We are all better for having known him as a friend, colleague, and teacher. We are very much grieved by his absence. B.C. Law School will never be the same again.

—Peter A. Donovan



Professor James W. Smith

Plants Purloined

by Sheryl Serreze

On October 25, 1982, law students were shocked to find that two of the Law School's newest additions were stolen over the weekend. The plant in front of the Placement Office and "Zyg's Sprig" were both missing on Monday morning. Sprig was later discovered outside the building, but the low-light corn plant which had replaced the original "Weeping Fig" in the main entranceway of Stuart remains missing. It was uprooted when stolen, the pot being too heavy for the culprits.

The plants were purchased to help "warm up" the atmosphere of the law school. The Housekeeping Dept. bought the plant in front of the Placement Office, and CRG is responsible for our other two leafy additions. Other ideas for improving the environment in Stuart include wall murals, paintings protected in some

way from theft and painting the walls a different color than white all the time. Since the Fine Arts Graduate School is located here on the Newton Campus, perhaps works of art are not impossible to obtain.

This is not the first time such thievery has taken place beneath the Law School's honorable roof. In September, over the first weekend that the plants arrived, Sprig disappeared. Extensive sleuthing turned up a leaf by the front door to Stuart, leading towards the Freshman dorms. A sign was put up in Sprig's place, asking for its return, and the Freshman RAs were notified. Soon thereafter Sprig was returned unharmed.

CRG would like to bring new plants to the Law School, but money is tight all over. The Law School Administration will probably not be willing to take on additional expenditures to dress up the school when theft is such a problem.





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Baldwin: A Workers' Lawyer

by Barbara M. Epstein

Professor Anthony Baldwin is a Visiting Associate Professor from Albany Law School. He teaches Labor Law, Civil Procedure, and he will teach Constitutional Law next semester. His areas of expertise evolved from his own professional experiences. After receiving a B.A. in government from Boston University (he is forgiven — it was only the undergraduate school), he worked as a community organizer and a state director in the Massachusetts Welfare Rights Organization (members are welfare recipients). He then went to Harvard Law School, and after graduating worked with the legal department of the Office of Labor Relations for the city of New York, during the time of the city's fiscal crisis. For three years he represented the city in all its labor relations matters. It was a busy time, and proved an invaluable learning experience, including his introduction to the collective bargaining process. During this "exciting exposure" he saw himself as protecting the public, the taxpayers. It was then that he also started to evaluate his law school experience, having had time only to react to it while in school.

Baldwin left New York to accept a dual appointment as Assistant Dean and Assistant Professor at North Carolina Central University Law School. This is one of two state-supported law schools in North Carolina, and is predominantly black, having come into existence as a result of *Missouri ex rel. Gaines v. Canada* (under the "separate but equal" doctrine of *Plessy* there must be an in-state professional school for interested black students). As a Dean he was responsible for admissions, placement, alumni/ae affairs, student recruitment, student financial assistance, and student affairs. In his "free time" he taught Labor Law and Appellate Advocacy.

After four years Professor Baldwin went to Albany Law School, where he taught Civil Procedure, Employment Discrimination, Employment Regulation, and Constitutional Law. He also worked as a labor arbitrator and a labor mediator. He finds B.C. Law School much like Albany, with its friendly faculty and students, who seem fairly relaxed — considering that they are in a law school.

The workers' lawyer is not all work, though. Professor Baldwin enjoys watching all types of sports, especially basketball. And especially the New York "Knicks." (Worse than B.U!) In

fact, he is a professed fanatic as far as that team is concerned. He also is an active sportsman, playing tennis and learning racquetball. On the more sedate side he has an interest in music — popular and jazz — and his favorites are Bill Evans (an "introspective jazz pianist") and Oscar Peterson. And he has "begun to read again."

Although Professor Baldwin does not "do photography," he likes "taking pictures." Preferring instant gratification, he is not "one of the 35 mm folks... at least not yet" and trusts instead to his Kodak EK6.

One of the pleasant things he is finding about being in this area is the chance to reacquire himself with old friends and colleagues. He has discovered that what he was doing then was worth it, both in terms of the work and the people he met. He also enjoys visiting old haunts, like the original Legal Seafood, as well as marking the physical changes, such as Quincy Market.

Should you not have met Professor Baldwin yet, you can recognize him quite easily: he is the one on his third helping of Chinese Food.

Yearbook Gets Rolling

Mustafa Sayid, the executive editor of the 1983 *Sui Juris*, reports that all is going well with the yearbook. A photographer will be coming on campus sometime in November to take 3rd year portraits, and there are 5 student photographers currently taking candid shots around the school. Hunter Publishing has been contacted about dates for publication, and as it now stands *Sui Juris* will go to production on January 18, 1983 and the finished product will be available to students sometime in April.

Sayid also indicated that there will be some significant changes from last year's edition. These will include

- more uniformity in portraits
- greater number of candid
- 2nd as well as 3rd year students featured
- a section will be included where students give their opinions as to the best, worst, and wierdest experiences at law school

The yearbook still needs volunteers, especially artists, layout and photographers. Students are also encouraged to submit any candid photos they may have which they feel would add to the yearbook.

The *Sui Juris* office is located in M201C—next to the Alledger office.

—Sheryl Serreze

JAG Barred

continued from page 1

One faculty member was convinced that visiting employers should be held "to what we believe—to our view of the type of place our students would want to go" for employment. Another thought it preposterous that adherence to this policy would mean that if an employer calls up asking for a "good, Catholic boy" our official response would have to be, "Sorry, can't help you." The former view reflects the desire of some to impose the stricter standard not only on visiting recruiters, but also on students who in fact want to go to places where, as an incidental matter, homosexuals are not hired. The latter view reflects the idea that officials should freely make exceptions to policies, and that policies should not be adhered to by B.C. officials (such as Deans, Placement personnel) if asked to recommend students based on subjective evaluation of protected characteristics.

While the former ideology in a sense won out, the faculty's action was in no way an expression of "what the

policy should be sexual "orientation" or sexual "preference," was to be important in the final wording of the amendment, the issue arose during the course of discussion as well. One of the amendment's opponents wondered why one's sexual preference was different from, say, one's sophistication, which another translated as tie-wearing vs. non-tie-wearing. Why is it that an employer will be permitted to interview who has a policy of not hiring someone who refuses to wear a tie, a suit, a dress, etc.?

The retort was that tie-/non-tie-wearers are not as a class subject to discrimination and that the characteristic of tie-wearing or non-tie-wearing is not immutable; one can choose whether or not to wear ties. Homosexuality, on the other hand, is arguably immutable, in the way that one's inherited religious affiliation is so closely identified with one's chosen lifestyle as to be "unchangeable." In other words, it was argued that one's sexual orientation, whether or not "chosen," warrants greater protection than non-tie-wearing or any number of other such characteristics which employers use to judge the suitability of applicants.

After the expression of concern over

Good-faith compliance with the new policy will be the rule even if it means "the hypocrite comes, the honest person does not."

students wanted," as nebulous and perhaps inappropriate as that expression would be, but rather an expression of this faculty's view of the way things ought to be, and their view of what is right and wrong for employers to consider in employing B.C. students. To hold recruiters only to the requirements of the law, under which homosexuals are not a "protected" class, would be to shirk the responsibility of a private institution as one professor put it, to lead in the "development of ideas with respect to the law," and to fail in our commitment to students admitted to this law school, and to acquiesce to popular opinion in oppressing homosexuals.

"Legality Poor Test of Our Practice"

In saying that it is by no means clear that the Army is "discriminating" against lawyers (and others) beyond a certain age or with certain handicaps, and in questioning the reasonableness and propriety of the current legal standards, the faculty opened itself to questions of reasonableness with respect to the classification of homosexuals as unsuitable for Army employment. The only rational basis for the exclusion of homosexuals discussed by the faculty was the notion that "other soldiers will be distressed" by the presence of homosexuals, in the trenches or on base, having an undesirable effect on morale and performance of the troops.

The comparison was made to the days when blacks and whites were segregated in the armed services for the same reasons. While the policy had a rational basis at the time, it was wrong and eventually was altered in favor of integration. Progressive and visionary thinkers knew long before the policy was changed that it should and probably would be changed. Likewise today, it was the sense of the faculty that B.C. should make a statement consistent with enlightened thought. Homosexuals appear to be no better or worse lawyers and no better or worse soldiers, notwithstanding the impact of their presence on the emotions of others. Thus acting with the ability to set policies reflecting their view of a "better world," the faculty made a decision that only a limited number of courts of last resort have been able to make: that homosexuals should be treated equally in employment.

"Orientation" vs. "Preference"

While the question of whether the appropriate phrase for the amended

whether the faculty ought not examine more thoroughly the Army's alleged rational basis for excluding homosexuals, and the discussion of problems with enforcement of the proposed policy in general, the sense of the faculty appeared to be that the new policy, like the old, could only be reasonably enforced in those instances where the employer has a blatant policy of discrimination, with or without a rational basis. Otherwise the evidentiary hornets nest becomes a real obstacle to efficiency. There was mention of the need for study of those employers against whom substantive allegations were made, but the faculty left to another day the consideration of the form such fact-finding should take, if it is ever to be done. For instance, no signed statements from employers indicating their compliance will be required. Good-faith compliance will continue to be the policy even if it means "the hypocrite comes, the honest person does not."

State of Federal Law in the Area

As the student author of one lengthy memorandum submitted to the Law School Placement Committee (the only one this writer has had access to) in opposition to restrictions on JAG recruitment at B.C. wrote: "[I]t is necessary to remember that the entity now subject to our scrutiny is the United States Army, a military organization. Logic dictates that principles applicable to the civilian world may not be transferable to the military. . . . JAGC is presently recruiting to fill positions in which Army officers will act [in the dual roles of] both Army officer and attorney." As an officer, the lawyer must meet the Army's requirements with regard to certain personal conduct embodied in Army Regulations A.R. 135-178 which allows for discharge of those soldiers who engage in homosexual activity, or who exhibit homosexual "tendencies, desire or interest."

These regulations were recently held to violate the First and Ninth Amendments, according to the student writer, in *benShalom v. Secretary of Army* (E.D. Wis. 1980). But the Ninth Circuit has upheld similar Navy regulations in *Beller v. Middendorf* (1980), and the Supreme Court has "tacitly approved" the notion that sexual preference (which might be different from sexual orientation) is not subject to constitutional protection, in *Doe v. Commonwealth's Attorney* (1976). Provisions of the Uniform Code of Military Justice make homosexual

Law Revue to Entertain on Main Campus

Show to be held in April at New Theater

by Tim Borchers

Law Revue will be on the road this year—April 14, 15 and 16, 1983 at the Theater Arts Center (New Theater) on the main campus. Fortunately for the Revue, a production scheduled at the theater for those dates was cancelled, permitting the Law School's thespians to perform in the favorable month of April without having to leave B.C.

It had been feared that New Theater would be available to the law school for only a few days in early March—by no means a good time for the performances. It is then that first-year moot court is in full swing and the Grimes competition is winding up. But now the Revue can proceed confidently knowing that their show stands a good chance for a big and enthusiastic turnout.

New Theater will be a dramatic improvement [sic] over the Newton Campus Chapel basement, the Revue's former stage. Not only is the theater a technological wonder—relatively speaking—but seating will be plentiful and comfortable. Furthermore, Bar Review will be welcome there, probably providing a cocktail hour before performances. Alternatively, Bar Review may help entertain Revue audiences at a reception of some sort at the Alumni House, also located on the Chestnut Hill campus. Traditionally

the law school's Alumni Association has held a reception following Friday's reception. That function will certainly be facilitated by a performance on the main campus.

On Friday, October 22nd, the Revue elected Marty Leinwand and Jim LaMothe as Directors, according to Susie Hays, Co-Producer with Jeanne Medeiros. The plot has also been determined, subject, of course, to some modification. Changes and new material are added right through to the performance dates, as novel ideas occur to the writers and performers. And, if last year is any example, some new one-liners and other quips are added *ad libitum* in performance. Thus the writing is never completed, but it will be substantially done by early next semester.

As we reported two weeks ago, the Revue's Friday afternoon meetings, held at 1:00 p.m. in Room 406 of Stuart, are open to all students interested in contributing to the production. Although the plot is "top secret" and most of the writers have been lined up, expression of interest in all areas of production at this early stage are invited. For instance, the Revue still needs a music director, one who is capable of the musical direction during rehearsals and performances, and preferably, who has the compositional skills necessary to put the musical ideas onto the staves.



Tom Veltner

activity (sodomy in particular) an offense. These were upheld in 1981 by the Ninth Circuit. Other provisions, at times recognized as applicable to homosexual conduct, require a male officer to maintain standards "becoming an officer and a gentleman." The broad scope of these provisions has been upheld by the Supreme Court, although not directly with respect to homosexual conduct (*Parker v. Levy* (1974)).

The chief concerns of the Army and other branches of the military are the threat of homosexuality to efficiency, morale and security. As one writer has put it, the "serviceman engaging in homosexual conduct [is] clearly susceptible to blackmail by a person threatening to report or otherwise reveal the . . . conduct." H. Moyer, *Justice and the Military*, Sec. 5-201 (1972).

The faculty did not discuss the state of the law in the area in deciding to offer equally to all students the opportunity to seek employment with those who come to B.C. to recruit, but of course it did not have to do so. As a body with complete discretion over such matters it was entitled to make its

decision on the basis of reason and opinion, according to faculty custom in such matters.

The faculty may have violated courtesy in dealing with the Army and with students by failing to give them more than a few days notice of the change in policy. The Law School owed them no other duty, however, and apparently acted in good faith as speedily as possible. The faculty was originally to vote on the issue one week earlier, three days before JAG was to have come, but because of poor attendance at that meeting and the death of Prof. James Smith that morning, the vote was postponed.

Placement Director, Jean Glovsky, recommends that students desirous of employment with the Army contact Fort Devens directly.

Other faculty meeting notes: Dean Huber announced that the Trustees of the University have voted to name the Law School's faculty wing after Prof. James Smith; a committee will be set up to conduct a ceremony for the dedication in spring, 1983. A faculty committee will also be set up to put together a memorial service on campus for the late Prof. Smith.

NOTICES

Anyone interested in joining HALT (organization to "Help Abolish Legal Tyranny"), contact Zyg Plater, B.C. Law School's Representative (ha, ha-Zyg).

CONVOCATION ON NUCLEAR ARMS CONTROL — On November 11, 1982, at campuses throughout the country, a Convocation on Nuclear Arms Control will be held. The national sponsors are: the Union of Concerned Scientists, Physicians for Social Responsibility, United Campuses to Prevent Nuclear War and the Lawyers Alliance for Nuclear Arms Control (LANAC).

The university wide Convocation will consist of morning and afternoon programs at the main campus and an evening session at the law school.

The main campus program will be held at McGuinn Hall and includes:

10:30 - 12:00 - Films (incl. "No First Use" film)
2:00 - 3:00 - Professor Paula Rayman, "Conversion to a Peace Economy"
3:00 - Faculty Panel Discussion
5:00 - Reception

The law school program will consist of a talk by the Honorable Edith W. Fine concerning the survival of the legal tradition in the face of nuclear war. Members of our law faculty, and other local law faculties have been invited to participate in a panel discussion relating to the Convocation subject, "Solutions to the Nuclear Arms Race."

The law school program will be at:
Stuart Hall (Room to be announced)
7:00 PM, November 11, 1982

In a related event, Northeastern University Law School will present an address by Professor Philip Schrag of Georgetown University entitled "Lawyers and Nuclear Weapons or What Good are Billable Hours at Four Minutes to Midnight." This will be at the Law School Auditorium, 400 Huntington Avenue, 5:00 PM on November 4th.

Students willing to become involved in the anti-nuclear movement should meet with Prof. Berney in Room 409 at 3:15 PM, Thursday, October 28th.

COURSE REGISTRATION REPORTS

— The course registration reports recently received in the mail by all students should be checked carefully for accuracy. A number of errors have already been brought to Mr. Pepper's attention. Students noting errors in their registration should see Mr. Pepper immediately.

CRG SPEAKER SERIES — Dr. Archie Carr III, Assistant Director, Animal Research and Conservation Center, New York Zoological Society (Bronx Zoo) will be speaking in the Moot Court Room on Tuesday, November 9th at 4:00 PM. His topic will be "Keeping the Ark Afloat: Mechanisms for International Wildlife Conservation." The lecture is sponsored by the Conservation Research Group. All students and faculty are invited to the lecture and to a reception afterwards in Barat House.

SCHOLARSHIPS FOR WOMEN LAW STUDENTS

— The Massachusetts Association of Women Lawyers is pleased to announce that it is once again awarding scholarships to "financially worthy female law students." Those who are interested should contact the Admissions Office for application forms and for more information.

LSA — The Law Student Association has been asked by Anne Peters, Director of the Office of Alumni Relations to enlist ten law student volunteers to help with the Law School's annual fund telethon, to be held Monday—Thursday, November 15th—18th. Students are needed to help make telephone calls. "The evening begins with a dinner and bar at 5:30 PM, and we encourage the students to mingle and to make themselves known with the alumni volunteers and with the other volunteers present."

FALL ROAD RACE — The annual BC Fall Road Race will be held Friday with the usual minimal entry fee. All funds generated by this semester's race will be donated to the James W. Smith Scholarship Fund. Watch law school bulletin boards for details.

Classified Ads

For Sale: Technics 40W integrated amplifier \$100. Smith-Corona electric coronamatic typewriter \$100. Call Jeff or Sheryl at 735-7312.

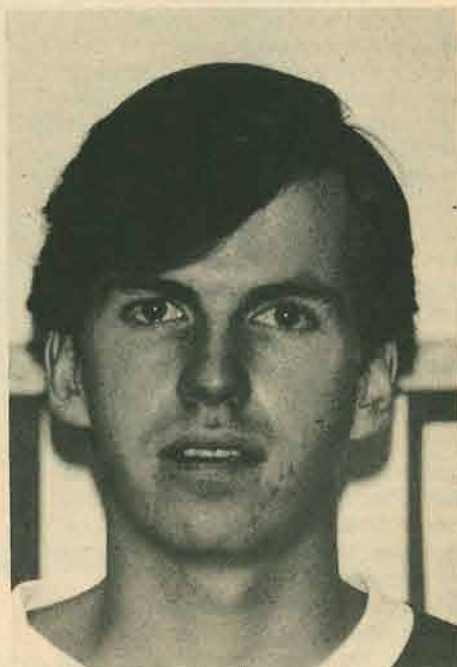
New LSA Rep Elected

First-year students select Bill O'Connell

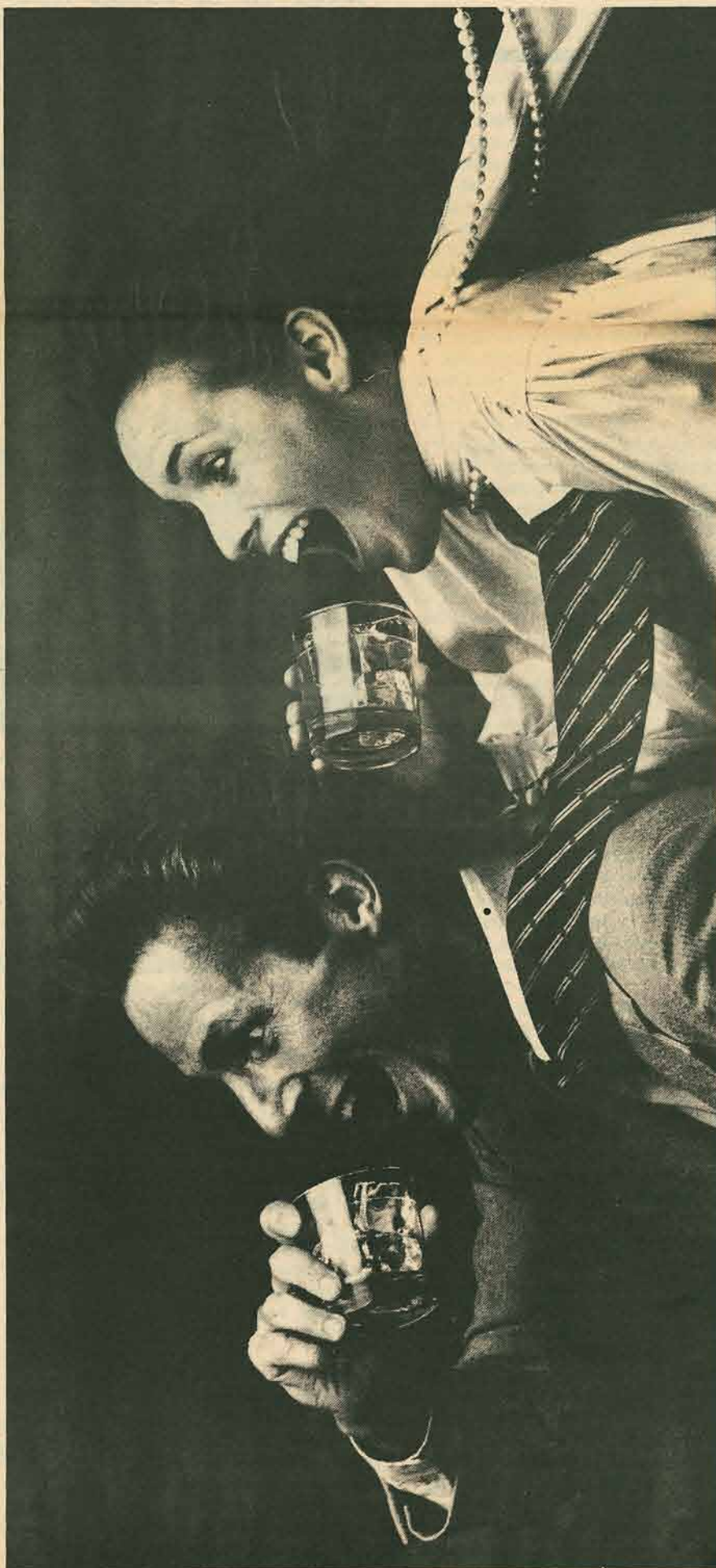
The first-year class has elected Bill O'Connell to be their LSA representative, by the tight margin of one vote. In an interview with the **Alledger**, O'Connell said that he became interested in the LSA when he noticed the activity fee on his term bill. When he ran, since he had only been here for a couple months, O'Connell was unsure of what the LSA was actually able to do, but he had some specific issues he wanted to work on. One is the parking situation. Another, of particular interest to his class, is using some of the surplus money generated by the extra first-year students to hire more faculty. O'Connell feels this will be necessary in order to preserve the student-faculty ratio, and to ensure that there will be enough classes and enough professors for his class in its second and third years. O'Connell also wants to work on the financial aid situation, and have more law school socials, especially so that people in the first year can get to know each other.

O'Connell would like ideas and input from the first year class, especially as to their priorities and anything they would like the LSA to do.

Michael Kilkelly



LSA Representative Bill O'Connell



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Intramural

Softball

Teams

Compete

for

Championship

NADS retain title

by Michael Clancy

To tell the truth, much of the softball played during last weekend's tournament to crown the king of the Law School's intramural fall season was less than aesthetically perfect. The Red Sox scouts stayed home and it was a good thing. The weather, however, was beautiful when the softball wasn't, and when the dust had finally settled on Sunday afternoon, the NADS had retained their pre-eminence in the world of law school softball.

The double elimination tourney began two weekends ago and saw four teams surviving until Sunday: the undefeated NADS, A.K.M.F., the nameless Team 3, and the ever present and always irritating Alumni. The NADS and A.K.M.F. managed to survive the early morning Sunday exams, and they prepared to play while the other (smarter) teams took a suggestion from the sky writing Miller Brewing Company planes overhead (we were happy that those who chose to spectate at the Head of the Charles Regatta were able to enjoy the show occasioned by our tournament) and headed for Miller Time.

A.K.M.F. came out with a vengeance in the first game, and the hot bats of Bob Carey (presently spending an anxiety-filled year as an R.A. and attending B.C.'s Business School), Kevin O'Brien and Steve Brake carried the challengers to an 18-9 victory, and gave both teams one loss. With the championship on the line, however, the NADS proved equal to the task. The fine play of Gary Walker, Joe "Coach" Walsh and Mike Jones left the NADS within two runs until the last half of the last inning, when the NADS' bats (it just can't be helped folks) came to life, producing three runs and dodging Keith Jackson's bullet.

The vendors have gone home for the season, and the law school softball community will spend a winter plotting the demise of the NADS next season. We are pleased to announce that fan support was up this year (and they were both extremely impressed). We plan on your participation and support come spring.



Ken Vetter

Bob "Red" Carey stalking the diamond.

The Interview

by Ray Snullius

C-r-e-a-k. "Oliver Kra—"

(interrupting) "Yes! That's me!"

"Come in and have a seat. I'm Cartwright Q. Alexander from the law firm of Stale & Bore."

"Hello. Pleased to meet you, Mr. Cartwright."

"That's Alexander."

"Oh, gee, okay. And you can call me Oliver."

Cold stare. "Oliver Wendell Krankwish . . . is that the right pronunciation?"

"Actually, it's Krankewicz, pronounced Crank-uh-wits. Krankewicz."

"Oh . . . 'Oliver' . . . is that what people call you?"

"Well, they've called me responsible, intelligent, productive . . ."

Cold stare. "I, uh, see. Ahem. Well, let's get down to the nitty-gritty, if you will."

"Of course I will."

"Ahem. Yes. Tell me, . . . Oliver, why did you come to law school?"

"Well, I had a couple of classes this morning, and there was this interview with you."

"I mean generally speaking. What planted the seed, so to speak, in your mind to pursue the profession of law?"

"I guess you might say a bird dropped it there, the seed, that is. It must have been an eagle, so I came to B.C. And the seed germinated rather quickly in my fertile mind. I think I have a special talent for law. In college I nearly flunked organic chemistry, so that took care of med school. Physics really blew me out, so there went engineering. I couldn't dig anthropology at all, and foreign languages were all Greek to me. So a philosophy teacher suggested I consider law. There aren't any right answers, and you can bullshit your way through anything—all you have to do is spot the issues. Well, I can spot a *Sports Illustrated* or a *Mad Magazine* from a mile away. So I applied to law school and here I am."

Cold stare. "Ah, yes . . . I see. Your resume, brief as it is, shows that you worked last summer for Dunn & Gawn. How was that experience?"

"I really learned a lot. I started off doing memos on some real gutsy stuff, like a products liability case and a class action against one of the state's biggest employers. I guess they were so impressed they assigned me some really intricate issues like gum chewing as a public nuisance, violation of FAA noise abatement regulations by a ringing alarm clock thrown out the window within a six-mile radius of an airport, and substantiation of psychic damages suffered by a goldfish assaulted by a neighbor's cat, or was it a snaildarter?"

"Is your writing sample on one of . . . those subjects?"

"A writing sample? I didn't bring any—but if you've got a piece a paper and an erasable pen, I can give you a sample right now."

"I think we can dispense with the formality. How about references? Do you have any of those?"

"Oh, sure. I have a Merriam-Rand Dictionary, and the Golden Book Encyclopedia. If I need anything more than that, our library has a rather extensive collection."

Cold stare. "Ahem. I guess we can dispense with that formality as well. Your GPA is certainly exceptional—a 3.99. How did you (ever) manage that?"

"Oh, gosh, I'm sorry. That's a typo. It should be 2.88. It really wasn't that difficult. These legal concepts come to me quite naturally, kind of in nuggets. Why, I was leading practically all the class discussions, and I was always ready when my name was coming up in the alphabet. I could have done better, but I think some second or third year exams got mixed up or something; they certainly didn't cover any of the material in the classes I went to in Professor Katz's or Berney's courses."

"Aha. Well, I think we can draw things to a close now. Do you have (yawn) any questions for me?"

"Yes. I've been wondering . . . what distinguishes your firm from all these other Federal Street, Congress Street, Post Office Square, Beacon Street, etc., firms, such as Woodwind, Conductor & Score; Curdles & Whey; Worser & Worser; and Chewed, Maul & Skewered?"

"Our telephone number is different. . . If I may, I'd like to ask you a final question: What is it about Stale & Bore that interests you?"

"Well, I know that Hungadunga, Hungadunga, Hungadunga, Hungadunga & McCormick have closed their branch here, and that many of their clients have gone to you. You see, my father is a member of the Board of MultiMega Corporation, and I heard from a reliable source that they might retain Stale & Bore. So I thought I would try to go where the action is. I figure that anybody who gets the MultiMega account would be able to offer me a relatively secure position."

"Ah, well, yes, of course, heh-heh. MultiMega Corporation, you say. Well, yes, of course, that's very fine. Well, Oliver, from the appearances of your glowing record here—you certainly have concentrated a lot of quality in just that half a page—and on the basis of our talk here today, heh-heh, I think you'll be hearing from our Hiring Committee shortly. They're always looking for fine, talented people like you. It's been nice talking to you."

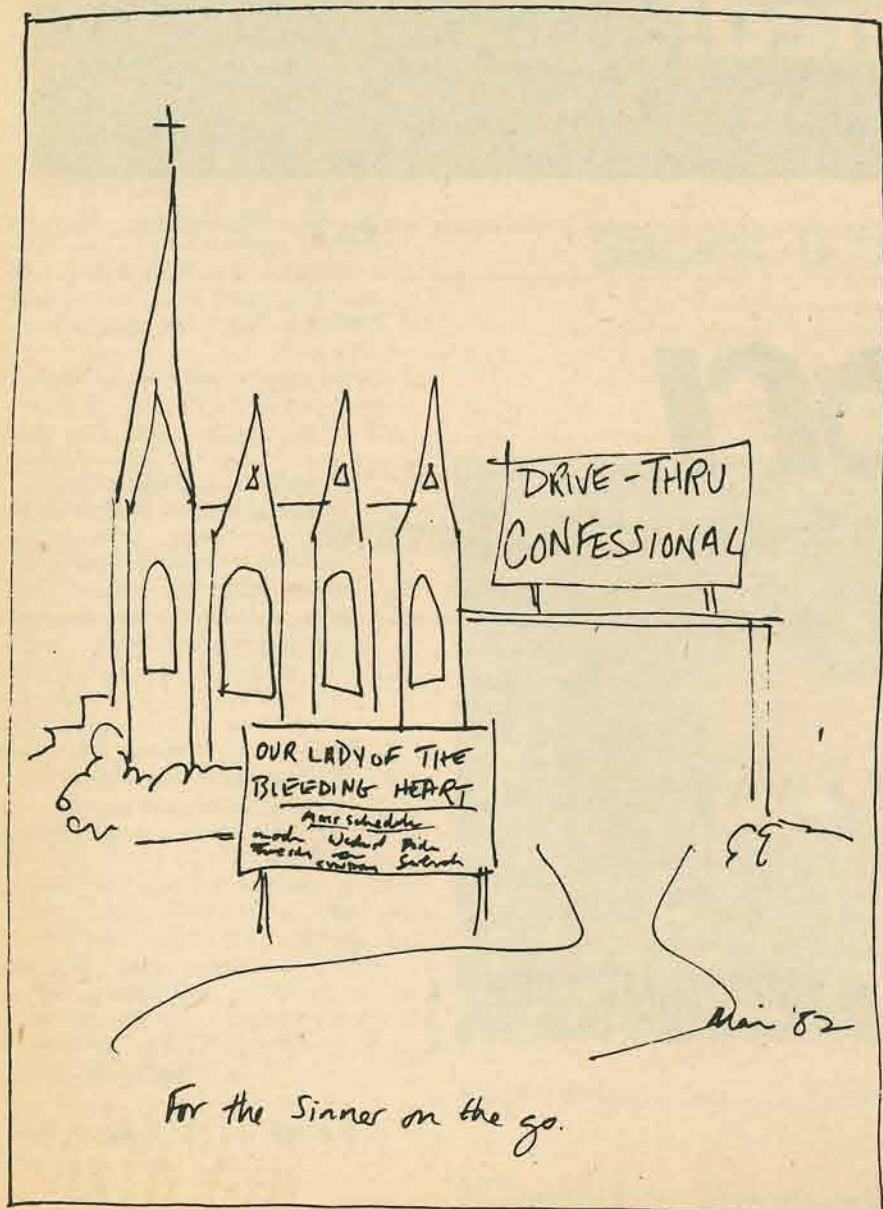
"Me too, Alex. See you later, litigator."

C-r-e-a-k. Bang.

(Outside:) "How'd it go, Ollie?"

"Rather well. I think I'll get a second interview downtown. That MultiMega story gets 'em every time."

Cartoon



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